

Attorneys for the Claypool Claimants

DISTRICT OF HAWAII

) No. CV05-00037 HG BMK
) [3 Consolidated Cases]
)
) **DECLARATION OF SCOTT**
) **CLAYPOOL IN OPPOSITION TO**
) **LIMITATION PLAINTIFFS'**
) **MOTION FOR PARTIAL**
) **SUMMARY JUDGMENT**

) Date: December 16, 2005
) Time: 9:00 a.m.
) Courtroom: Aha Nonoi, 4th Floor

) The Hon. Helen Gillmor
) Trial date: April 11, 20006

EXHIBIT 19

DENNIS CLAYPOOL, individually) No. CV04 00570 HG- BMK
and as Guardian Ad Litem for)
KRISTEN CLAYPOOL, a minor,)
SHERYL CLAYPOOL, SCOTT)
CLAYPOOL, and KRISTEN)
CLAYPOOL,)
Plaintiffs,)
vs.)
CAPTAIN ANDY'S SAILING, INC.,)
BLUE DOLPHIN CHARTERS, LTD.)
and BLUE DOLPHIN DIVING, INC.,)
Defendants.)
_____)

MATTHEW ISHAM, individually) NO. CV04-00559 HG-BMK
and as Guardian ad Litem for)
HAYDEN ISHAM, a minor,)
ROXANNE BEST ISHAM,)
Plaintiffs,)
vs.)
BLUE DOLPHIN CHARTERS, LTD.)
and BLUE DOLPHIN DIVING,)
LTD., CAPTAIN ANDY'S SAILING,)
INC.,)
Defendants.)
_____)

I, SCOTT CLAYPOOL, hereby state and affirm that:

1. I am an adult resident of Mesa, Arizona. I am the son of Dennis and Sheryl Claypool, the brother of Kristen Claypool, and one of the plaintiffs in this case.

2. On the afternoon of July 20th, 2004, I took a scuba and snorkeling cruise with my family to Makol'e Reef, Kauai on board the tour boat *Blue Dolphin*.

3. After the *Blue Dolphin* reached Makol'e Reef, my dad and I took an introductory scuba class from the boat's dive instructor, Matthew Isham, among the fissures and lava tubes immediately seaward of the *Blue Dolphin's* mooring site. At the moment the *Spirit of Kauai* ran into my dad, I was directly beneath him about 20 or 30 feet below the surface. I surfaced in time to hear my dad screaming. I swam over to him and saw that his right arm had been cut open like a quartered orange. I was very scared and worried about my dad. His injury was bloody and very serious. After I swam over to my dad, the *Spirit of Kauai* circled back to pick us up. I went on board along with my dad and Matthew Isham.

4. Once we were all on board, the *Spirit of Kauai* headed out to sea to take my dad and Mr. Isham to an ocean liner that was lying offshore. During that ride, I

sat near my dad and heard him call out to Matt Isham: "Hang on Matt, hang on." Although someone had tied a rope tourniquet around my dad's arm, he was still bleeding very badly. When the *Spirit of Kauai* finally reached the line, I was told that I could not follow my dad but had to stay on board the *Spirit*. I had to stand by and watch helplessly while my dad pulled himself upright and made his way from the pitching tour boat through a small heaving sea door in the liner's side. I realized that one misstep could send him back into the water between the two hulls. I was very afraid.

5. Once my dad got on board the liner, I could no longer see, hear or talk to my dad. I was extremely worried. After the *Spirit of Kauai* took me back to Port Allen, I met back up with my mom and sister. They were obviously scared and worried too.

6. None of us were able to sleep much that night. I have also had trouble sleeping since the accident. My dad's accident has deeply distressed me and my whole family.

I have reviewed the foregoing declaration, and can confirm under penalty of perjury under the laws of the State of Hawaii that the facts and opinions contained

therein are true and correct, and personally known to me, and that if I were called as a witness herein, I could competently so testify under oath.

Executed on this 29th day of November, 2005, in the City of Mesa, State of Arizona.



Scott Claypool